

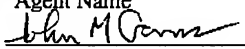
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1103326-0203**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Lundberg et al.  
Serial No. : 10/693,317  
Filed : October 23, 2003  
For : NEW PHARMACEUTICAL FORMULATION AND  
PROCESS  
Examiner : Sheikh, Humera N.  
Group Art Unit : 1615

CERTIFICATE OF TRANSMISSION UNDER 37 C.F.R. 1.8	
I hereby certify that this paper is being facsimile-transmitted to the U.S. Patent and Trademark Office on December 7, 2004 at the facsimile number <u>703-872-9306</u> .	
John M. Genova	32,224
Agent Name	PTO Reg. No.
	<u>7 December 2004</u>
Signature	Date of Signature

**Mail Stop**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**ATTENTION: Examiner Humera N. Sheikh****DATE: December 7, 2004****NUMBER OF PAGES: 17****FAX NUMBER: 703-872-9306**

**INFORMATION DISCLOSURE STATEMENT  
WITHIN THREE MONTHS OF FILING OR  
BEFORE MAILING OF FIRST OFFICE ACTION (37 C.F.R. §1.97(b))**

Sir:

Applicants submit this communication in compliance with 37 C.F.R. §§1.56, 1.97 and 1.98.

The referenced application is the great-great-grandchild of U.S. Patent Application Serial No. 08/612,951, filed March 8, 1996, now US 6,013,281 (the "281 patent"), issued January 11, 2000, which is a §371 of PCT/SE96/00161, filed February 9, 1996, which claims priority to SE 9500478, filed February 9, 1995.

The assignee of the referenced application and the '281 patent is the same, i.e., Astra Aktiebolag.

The '281 patent was the subject of a patent infringement litigation, i.e., In re Omeprazole Patent Litigation, 2004 WL 1171254 (S.D.N.Y.). Attached to this communication is Form PTO/SB/08A identifying the court's written decision. A copy of the court's written decision is enclosed.

The '281 patent has 21 claims. However, only claims 1-3, 7, 16, 20 and 21 of the '281 patent were asserted and at issue in the litigation. The court held that the asserted claims 1-3, 7, 16, 20 and 21 of the '281 patent are invalid under 35 U.S.C. §102 in view of Korean Laid Open Patent Application No. 92-17571, filed September 26, 1992 (the "Korean patent application"). Claim 9 was also held to be invalid under 35 U.S.C. §103 in view of the Korean patent application. The court held that the Korean patent application was "laid open" and, therefore, in the public domain as of April 20, 1993, i.e., more than one (1) year before the February 9, 1995 priority date of the '281 patent.

Applicants made the Korean patent application of record in the referenced application by the Information Disclosure Statement that was filed concurrently with the referenced application on October 23, 2003.

Pages 7-12 of the enclosed written decision provide the court's discussion regarding anticipation and obviousness. Pages 12-13 of the written decision are concerned with the accused infringer's allegations of fraud and inequitable conduct in the procurement of the '281 patent. However, as set forth in the first full paragraph on page 12, top left-hand column, of the written opinion, the court stated that the defenses of fraud and inequitable conduct were mooted by the court's rulings of invalidity with respect to the asserted claims of the '281 patent.

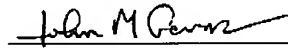
An appeal of the court's decision, including a cross-appeal, regarding the holding of invalidity of claims 1-3, 7, 16, 20 and 21 of the '281 patent, docketed as Astra Aktiebolag v. Andrx Pharma., Nos. 04-1562, -1563, -1589, is presently pending before the Court of Appeals for the Federal Circuit.

**TIME OF TRANSMITTAL OF INFORMATION DISCLOSURE STATEMENT**

This Information Disclosure Statement is being filed under 37 C.F.R. §1.97(b)(4) before the mailing of a first Office Action on the merits after the filing of an application under §1.114, and therefore no fee should be due. However, if there be a fee due in connection with this communication, the Commissioner is authorized to charge any such fee to Deposit Account No. 23-1703.

Dated: 7 December 2004

Respectfully submitted,



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Reg. No. 32,224  
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**1103326-0203**

PTO/SB/08A (08-03)

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Substitute for form 1449/PTO		<b>Complete if Known</b>	
<b>INFORMATION DISCLOSURE STATEMENT BY APPLICANT</b> (Use as many sheets as necessary)		Application Number	10/693,317
		Filing Date	October 23, 2003
		First Named Inventor	Per Johan Lundberg
		Art Unit	1615
		Examiner Name	Humera N. Sheikh
Sheet 1 of 1	Attorney Docket Number	1103326-0203	

U.S. PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Document Number Number-Kind Code <sup>2</sup> (if known)	Publication Date MM-DD-YYYY	Name of Patentee Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages/Figures Appear

FOREIGN PATENT DOCUMENTS					
Examiner Initials*	Cite No. <sup>1</sup>	Foreign Patent Document Country Code <sup>2</sup> -Number <sup>3</sup> -Kind Code <sup>2</sup> (if known)	Publication Date MM-DD-YYYY	Name of Patentee or Applicant of Cited Document	Pages, Columns, Lines, Where Relevant Passages Or Relevant Figures Appear

NON PATENT LITERATURE DOCUMENTS					
Examiner Initials*	Cite No.	Include name of the author (in CAPITAL LETTERS), title of the article (when appropriate), title of the item (book, magazine, journal, serial, symposium, catalog, etc.), date, page(s), volume-issue number(s), publisher, city and/or country where published.			T
		In re Omeprazole Litigation (2004 WL 1171254 (S.D.N.Y.))			
Examiner Signature			Date Considered		

\*EXAMINER: Initial if relevant consideration, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not corrected. Include copy of this form with next communication to applicant. \*Applicant's unique citation designation number (optional). \*See Kind Codes of USPTO Patent Documents at [www.uspto.gov](http://www.uspto.gov) or MPEP 901.04. \*Enter Office that issued the document, by the two-letter code (WFO Standard ST.1). \*For historical patent documents, the indication of the year of the date of the document must precede the serial number of the patent document. \*List of documents by the appropriate symbols as indicated on the document under WFO Standard ST.1.6 if possible. \*Applicant is to place a check mark here if English language translation is attached. This collection of information is required by 37 CFR 1.97 and 1.98. The information is required to obtain or retain a benefit by the public which is to be (and by the USPTO is treated) as prior art. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. The collection is intended to take 2 hours to complete including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the manner of use you require to complete this form and/or suggestions for reducing this burden should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORM TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.